IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4396 OF 1991

Shri Arvind Mallikarjun Bagdure .. Petitioner

versus

Smt.Kalavati N. Vijapure & ors. .. Respondents

...

Mr.Y.S. Jehagirdar i/b V.B. Rejure for the petitioner.

Mr.P.M. Mengane for the respondents.

CORAM : D.G. KARNIK, J

DATED : 26th July 2004.

P.C:-

1. By this petition, the petitioner landlord challenges the judgement and order dated 25th October 1990 of the learned Addl. District Judge Solapur dismissing the Civil Appeal no.133 of 1988 confirming the judgement and order of the learned Civil Judge,

Solapur dismissing regular Civil suit no.931 of 1982.

2. The relevant facts are stated below:

The petitioner is the owner of the property bearing house no.985, City Survey no.1829 admeasuring about 62.7 sq.m situated at Solapur. The respondent is a tenant in the suit property since long. The petitioner purchased the suit property from the previous owner under a sale deed dated 27th February 1989 and immediately thereafter filed a suit bearing regular Civil Suit no.931 of 1982 for possession against the respondent on the ground that the petitioner required the suit premises on the ground of requirement and on the ground that the respondent had carried out permanent construction of a latrine, without the consent of the petitioner. The trial Court held against the petitioner on both the grounds and dismissed the suit. By a judgement and order dated 25th October 1990, the appellate Court dismissed the appeal. That judgement is impugned in this Writ Petition. The petitioner has contended that he purchased the suit property for the purpose of his residence. He wants to demolish the said building and construct a new building which he wants

to occupy by himself. The Courts below have held that though the existing building was to be demolished and new building was to be constructed, a new building was going to be used by the petitioner for the purpose of his residence, the case would fall under clause(g) and not under clause (h)(h) of sub section (1) of section 13 of the Bombay Rents Hotel Lodging House Control Act 1947 (for short 'the Act'). The learned counsel for both the parties submit that the said finding is correct and therefore, it is not necessary to consider whether the case falls under clause(g) or (h)(h) of sub-section(1) of section 13.

3. In his evidence, the petitioner has submitted that he lives in house no.814 which also admittedly belongs to the family of the petitioner. i.e. the petitioner, his brother and father are residing in the said property house no.814. Admittedly, there are 8 rooms in possession of the petitioner family in the said house no.814 and it is not the case of the petitioner that the said 8 rooms would not be sufficient for the entire family. However, the petitioner pleaded that the house no.814 belongs to the father of the petitioner and father wishes that the petitioner should use the house. Therefore, the

petitioner wants the suit premises for his own residence. In his oral evidence, the petitioner has admitted that petitioner's father had two brothers viz. Lingappa and Mahadeo and there was partition between them in the year 1980. He has further stated that house no.814 was not allotted exclusively to his father but was divided between his father and uncles and only the southern side house came to the share of his father which admeasured 8 rooms. If 8 rooms in house no.814 came to the share of the father of the petitioner in a partition between the father and uncles, then the said 8 rooms would be a joint family in the hands of the petitioner and the petitioner would have a share in the said 8 rooms. The petitioner therefore, has a right to stay in the said 8 rooms jointly with his father and brother. It is not the case of the petitioner that there has been a further partition between the petitioners father and himself and his brother and house no.814 has been allotted only to the share of the petitioner's father and some other property has been allotted to the share of the petitioner. The 8 rooms which is in possession of the family of the petitioner are not shown to be insufficient. In the circumstances, the trial Court as well the appellate Court came to the

conclusion that the petitioner did not require the suit premises reasonably and bonafide for his own use and occupation. On consideration of the evidence, the said finding is a possible finding and cannot be set aside in exercise of a writ jurisdiction under Article 227 of the Constitution of India.

4. As regards the permanent construction, the petitioner has not given the details of the alleged construction in his plaint. The appellate court has held that the latrine is constructed only in the arch in the northern wall and walls for the latrine are made up of a tinsheet. The appellate Court after taking into consideration the nature of the construction and in particular that it was made up of tinsheets has come to the conclusion that the construction of the latrine did not amount to making up of any permanent structure nor did it cause any damage to the property. The concurrent finding of fact reached by the trial court as well as the appellate Court that the latrine is a permanent construction and does not cause a damage to the property is also a possible finding and cannot be interfered with in writ jurisdiction.

5. Hence, there is no merit in the petition which is hereby dismissed.

6. In the facts and circumstances of the case, parties shall bear and pay their own costs. Rule discharged. No costs.

D.G. KARNIK, J